

**APPENDIX**

# **REGULATORY ENVIRONMENT**

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## Acronyms/Abbreviations

Basin Plan	Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 1996 or 1998
BMPs	best management practices
CDFG	California Department of Fish and Game
CEQA	California Environmental Quality Act
CWA	Clean Water Act
DHS	California Department of Health and Safety
EFH	Essential Fish Habitat
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NPDES	National Pollution Discharge Elimination System

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RCRA	Resource Conservation and Recovery Act
Reclamation	Bureau of Reclamation
Regional Board	Regional Water Quality Control Board
Service	U.S. Fish and Wildlife Service
State Board	California State Water Resources Control Board (not SWRCB)
SWPPP	Storm Water Pollution Prevention Plan
UIC	Underground Inspection Control (Program)
USACE	U.S. Army Corps of Engineers

Construction and operation of the alternatives under consideration would be subject to a variety of regulatory compliance actions that are in place to safeguard the human and biological environment. Table F-1 provides a quick reference to the regulatory compliance actions that may apply to each of the alternatives. Many of the regulatory compliance actions would require the Bureau of Reclamation (Reclamation) to obtain, or ensure that, the applicable approvals are obtained.

**Table F-1**  
**Federal, State, and Local Compliance Actions, Legislation, Requirements, Regulations, Permits, Licenses, and Approvals That May be Necessary for an Implementable Alternative Pursuant to the San Luis Drainage Feature Re-evaluation**

<b>Ocean Disposal Alternative</b>	<b>Delta Disposal Alternatives</b>	<b>In-Valley Disposal Alternative</b>
<b>Environmental Compliance Regulations</b>	<b>Environmental Compliance Regulations</b>	<b>Environmental Compliance Regulations</b>
National Environmental Policy Act	National Environmental Policy Act	National Environmental Policy Act
California Environmental Quality Act	California Environmental Quality Act	California Environmental Quality Act
<b>Biological Resource Legislation and Requirements</b>	<b>Biological Resource Legislation and Requirements</b>	<b>Biological Resource Legislation and Requirements</b>
Fish and Wildlife Coordination Act	Fish and Wildlife Coordination Act	Fish and Wildlife Coordination Act
Migratory Bird Treaty Act	Migratory Bird Treaty Act	Migratory Bird Treaty Act
Endangered Species Act	Endangered Species Act	Endangered Species Act
California Endangered Species Act	California Endangered Species Act	California Endangered Species Act
Magnuson-Stevens Fishery Conservation and Management Act	Magnuson-Stevens Fishery Conservation and Management Act	Magnuson-Stevens Fishery Conservation and Management Act
California Fish and Game Code (Section 1601) Streambed Alteration Agreement	California Fish and Game Code (Section 1601) Streambed Alteration Agreement	California Fish and Game Code (Section 1601) Streambed Alteration Agreement
Executive Order 11990 (Protection of Wetlands)	Executive Order 11990 (Protection of Wetlands)	Executive Order 11990 (Protection of Wetlands)
Marine Mammal Protection Act	Marine Mammal Protection Act	
<b>Disposal/Discharge-Related Requirements, Permits, and/or Approvals</b>	<b>Disposal/Discharge-Related Requirements, Permits, and/or Approvals</b>	<b>Disposal/Discharge-Related Requirements, Permits, and/or Approvals</b>
Clean Water Act	Clean Water Act	Clean Water Act
Rivers and Harbors Act of 1899	Rivers and Harbors Act of 1899	Rivers and Harbors Act of 1899

**Table F-1 (continued)**

<b>Ocean Disposal Alternative</b>	<b>Delta Disposal Alternatives</b>	<b>In-Valley Disposal Alternative</b>
Safe Drinking Water Act	Safe Drinking Water Act	Safe Drinking Water Act
		Underground Injection Control Program
Resource Conservation and Recovery Act	Resource Conservation and Recovery Act	Resource Conservation and Recovery Act
California Porter-Cologne Water Quality Act	California Porter-Cologne Water Quality Act	California Porter-Cologne Water Quality Act
	California Toxic Pits Control Act	California Toxic Pits Control Act
	California Hazardous Waste Control Act	California Hazardous Waste Control Act
	California Hazardous Waste Management Act	California Hazardous Waste Management Act
		California Toxic Injection Well Control Act
		Federal and State Deep-Well Injection Regulations
		California Water Conservation and Water Bond Law
Surface Water Rights and Compliance	Surface Water Rights and Compliance	Surface Water Rights and Compliance
Groundwater Rights and Management and Compliance	Groundwater Rights and Management and Compliance	Groundwater Rights and Management and Compliance
<b>Bay/Delta/Coastal Requirements, Permits, and/or Approvals</b>	<b>Bay/Delta/Coastal Requirements, Permits, and/or Approvals</b>	<b>Bay/Delta/Coastal Requirements, Permits, and/or Approvals</b>
Coastal Zone Management Act and Coastal Zone Act Reauthorization Amendments of 1990	Coastal Zone Management Act and Coastal Zone Act Reauthorization Amendments of 1990	
California Coastal Commission	San Francisco Bay Conservation and Development Commission	
<b>Land Use Requirements and Regional, County, and Local Requirements, Permits, and/or Approvals</b>	<b>Land Use Requirements and Regional, County, and Local Requirements, Permits, and/or Approvals</b>	<b>Land Use Requirements and Regional, County, and Local Requirements, Permits, and/or Approvals</b>
California State Lands Commission Lease and Permit	California State Lands Commission Lease and Permit	California State Lands Commission Lease and Permit
California Department of Transportation Encroachment Permit	California Department of Transportation Encroachment Permit	California Department of Transportation Encroachment Permit
California County Permits	California County Permits	California County Permits

**Table F-1 (concluded)**

<b>Ocean Disposal Alternative</b>	<b>Delta Disposal Alternatives</b>	<b>In-Valley Disposal Alternative</b>
Levee District Permits	Levee District Permits	Levee District Permits
Reclamation Board Encroachment Permit	Reclamation Board Encroachment Permit	Reclamation Board Encroachment Permit
State, Areawide, and Local Plan and Program Consistency	State, Areawide, and Local Plan and Program Consistency	State, Areawide, and Local Plan and Program Consistency
Coordination with related Federal, State, and Local Programs	Coordination with related Federal, State, and Local Programs	Coordination with related Federal, State, and Local Programs
<b>Additional Environmental Legislation and Requirements</b>	<b>Additional Environmental Legislation and Requirements</b>	<b>Additional Environmental Legislation and Requirements</b>
Clean Air Act	Clean Air Act	Clean Air Act
National Historic Preservation Act	National Historic Preservation Act	National Historic Preservation Act
Wild and Scenic Rivers Act	Wild and Scenic Rivers Act	Wild and Scenic Rivers Act
California Wild and Scenic Rivers Act	California Wild and Scenic Rivers Act	California Wild and Scenic Rivers Act
Wilderness Act	Wilderness Act	Wilderness Act
Federal Water Project Recreation Act	Federal Water Project Recreation Act	Federal Water Project Recreation Act
Executive Order 11988 (Floodplain Management)	Executive Order 11988 (Floodplain Management)	Executive Order 11988 (Floodplain Management)
Executive Order 12898 (Environmental Justice)	Executive Order 12898 (Environmental Justice)	Executive Order 12898 (Environmental Justice)
Indian Trust Assets	Indian Trust Assets	Indian Trust Assets
Executive Order 13007 (Indian Sacred Sites on Federal Land)	Executive Order 13007 (Indian Sacred Sites on Federal Land)	Executive Order 13007 (Indian Sacred Sites on Federal Land)
American Indian Religious Freedom Act	American Indian Religious Freedom Act	American Indian Religious Freedom Act
Farmland Protection Policy Act and Farmland Preservation	Farmland Protection Policy Act and Farmland Preservation	Farmland Protection Policy Act and Farmland Preservation

Table F-2 provides an estimated complexity and difficulty for completion of regulatory compliance actions for the alternatives. The following sections describe the regulatory compliance actions identified in Table F-1 in greater detail.

**Table F-2**  
**Relative Difficulty to Obtain Permits Ordered from Most**  
**Complex and Difficult to Least Complex and Difficult**

Alternative	Ranking
Bay-Delta( Chipps Island )	Most complex
Bay-Delta ( Carquinez Strait )	Second Most complex
Ocean Disposal ( Point Estero )	Third most complex
In-Valley Disposal	Least complex

## **F1 ENVIRONMENTAL COMPLIANCE REGULATIONS**

The National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) apply to actions that a Federal or State agency may undertake directly, approve by issuing a permit or other authorization, or fund wholly or in part. NEPA provides a commitment that Federal agencies will consider the environmental effects of their actions. It requires that an EIS be prepared for all major Federal actions with significant environmental impacts. The CEQA requirements are similar to the NEPA requirements and require the preparation on an Environmental Impact Report for major State actions significantly affecting the quality of the physical and social environment. The President's Council on Environmental Quality regulations encourages the preparation of joint environmental documents to reduce duplication of analysis and paperwork. Both NEPA and CEQA require that an agency consider the environmental effects of its actions at the earliest point in time in which the analysis is meaningful. NEPA and CEQA are intended to inform decision makers and the public of the environmental consequences of the proposed action, provide an analysis of alternatives, and ensure consideration of mitigation options. Under both statutes, the environmental documentation and analysis are circulated for public review and comment before a final document is completed.

## **F2 BIOLOGICAL RESOURCE LEGISLATION AND REQUIREMENTS**

Both the Federal and State governments have enacted biological resource legislation and requirements to ensure that projects do not needlessly harm these resources. The major biological resource legislation's applicable to the alternatives under consideration are discussed below.

### **F2.1 Fish and Wildlife Coordination Act**

The Fish and Wildlife Coordination Act, as amended, provides an opportunity for the "appropriate wildlife agencies" [U.S. Fish and Wildlife Service (Service) and the National Marine Fisheries Service (NMFS)] to consult on Federal water development projects or on nonFederal projects that require a Federal permit or license. The agencies are provided the opportunity to conduct surveys and investigations to determine the potential damage to fish and wildlife resources with project implementation and to identify the mitigation measures that should be undertaken. The findings are incorporated into an official Section 2(b) report.



Similarly, Sections 13450 et seq. of the California Fish and Game Code provide opportunities for the California Department of Fish and Game (CDFG) to report its recommendations for wildlife conservation and development, and the expected results, and, describe the damage to wildlife attributable to the project and the measures proposed for mitigating or compensating for these damages. These provisions, however, do not apply to fish in irrigation canals or works, or to mammals destroyed or birds killed while damaging crops.

## **F2.2            Migratory Bird Treaty Act**

The Migratory Bird Treaty Act provides protection to migratory birds whose welfare is a Federal responsibility. The Service has indicated that the operation of evaporation ponds to dispose of subsurface agricultural drainage has adversely affected migratory birds (including the American avocet, black-necked stilt, gadwall, mallard, northern pintail, and snowy plover), in violation of this act. The Service has recommended that lands producing drainwater exceeding threshold levels for agricultural toxicants should either be retired from irrigated agriculture or the drainwater be disposed of in a manner that avoids wildlife contact, such as deep-well injection or treatment to render the drainage harmless to the environment. The Service has developed protocols that provide guidance criteria for agricultural drainage pond operations. These criteria include design criteria to prevent waterfowl attraction and to require substitute wetlands for mitigation.

## **F2.3            Endangered Species Act**

The Federal Endangered Species Act (ESA), as amended (16 *United States Code* 1536), establishes a national program for the conservation of threatened and endangered species of fish, wildlife, and plants and the preservation of the ecosystems upon which they depend. Section 7(a)(2) of the ESA requires Federal agencies to consult with the Service and/or the NMFS on any activities that may affect any species listed as threatened or endangered. These potential effects require initiation of the Section 7 consultation process. A list of Federal and State threatened, endangered, proposed, candidate, rare, species of concern, and/or species of special concern that may occur in the project area will be requested from the Service and the NMFS. Pursuant to Section 7 of the ESA, information that is normally included in a Biological Assessment addressing potential impacts on listed and proposed species will be incorporated into the NEPA document. Based on Reclamation's effects determination, formal consultation with the Service and the NMFS may be requested in compliance with Section 7.

## **F2.4            California Endangered Species Act**

The California ESA is similar to the Federal ESA. A list of State threatened, endangered, proposed, candidate, rare, species of concern, and/or species of special concern that may occur in the project area will be requested from the CDFG. Information that is normally included in a Biological Assessment addressing potential impacts on listed and proposed species will be incorporated into the NEPA document, as appropriate, and provided to the CDFG for their analysis and comment.

## **F2.5 Magnuson-Stevens Fishery Conservation and Management Act**

The Magnuson-Stevens Fishery Conservation and Management Act requires all Federal agencies to consult with the NMFS on all actions or proposed actions, permitted, funded, or undertaken by an agency, that may adversely affect Essential Fish Habitat (EFH). EFH is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” Only species managed under a Federal fishery management plan are covered. Species for which this Act applies for this project are Sacramento River winter-run salmon, Central Valley spring-run salmon, Central Valley fall/late fall-run salmon, and Central Valley steelhead. Consultation generally requires that an EFH Assessment be prepared and submitted to the NMFS for consultation. Information that is normally included in an EFH Assessment will be incorporated into the NEPA document.

## **F2.6 California Fish and Game Code (Section 1601) Streambed Alteration Agreement**

Pursuant to Section 1601 of the California Fish and Game Code, before any State or local governmental agency or public utility begins a construction project that will (1) divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake; (2) use materials from a streambed; or (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake, it must first notify the CDFG of the proposed project. Based on the notification materials submitted to the CDFG, the CDFG will determine if the proposed project may impact fish or wildlife resources. If the CDFG determines that the proposed project may substantially adversely affect existing fish or wildlife resources, a Lake or Streambed Alteration Agreement will be required, unless the proposed project is otherwise exempt.

## **F2.7 Executive Order 11990 (Protection of Wetlands)**

Executive Order 11990 (Protection of Wetlands) requires Federal agencies to take actions to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands when undertaking Federal activities and programs. Any agency considering a proposal that might affect wetlands must evaluate factors affecting wetland quality and survival. These factors should include the proposal’s effects on the public health, safety, and welfare due to modifications in water supply and water quality; maintenance of natural ecosystems and conservation of flora and fauna; and other recreational, scientific, and cultural uses.

## **F3 MARINE MAMMAL PROTECTION ACT (16 United States Code 1361-1407)**

In 1972, the Marine Mammal Protection Act was passed by the U.S. Congress to protect the many mammals who live in the world's oceans. This legislation is the basis for policies preventing the harassment, capture, injury, or killing of all species of whales, dolphins, seals, and sea lions, as well as walruses, manatees, dugongs, sea otters, and polar bears.

The law sets up a management regime to reduce marine mammal mortalities and injuries in their interactions with fisheries (gear entanglement, etc.); regulates scientific research in the wild; establishes basic requirements for public display of captive marine mammals; addresses issues specific to the tuna fishery in the eastern tropical Pacific Ocean where dolphins associate with tuna and are harassed, injured, and sometimes killed by fishing practices there; creates a management regime for native subsistence hunting of marine mammals in Alaska; and regulates the import and export of marine mammals and their products.

The primary government agency responsible for enforcing this act is NMFS. Under this act, the NMFS is responsible for the management and conservation of whales and dolphins (cetaceans) and pinnipeds other than the walrus. Walruses, manatees and dugongs (sirenians), sea otters, and polar bears are under the jurisdiction of the Service.

This act underwent some significant changes in its 1994 amendments, especially with respect to switching the emphasis for pinnipeds from protection to management.

## **F4 DISPOSAL/DISCHARGE-RELATED REQUIREMENTS, PERMITS, AND/OR APPROVALS**

Both the Federal and State governments have enacted disposal/discharge-related legislation and requirements to ensure that projects do not needlessly harm the environment. The major legislation's applicable to the alternatives under consideration are discussed below.

### **F4.1 Clean Water Act**

The Clean Water Act (CWA) gave the EPA the authority to develop a program to make all waters of the United States "fishable and swimmable." The CWA has an antidegradation policy imposed by the U.S. Environmental Protection Agency (EPA). Except under certain specified conditions, States must maintain the 1977 levels of water quality. This program has included identifying existing and proposed beneficial uses and methods to protect and/or restore those beneficial uses.

The CWA contains many provisions, including provisions that regulate the discharge of pollutants into waterbodies. The discharges may be direct flows from point sources, such as an effluent from a wastewater treatment plant, or a nonpoint source, such as eroded soil particles from a construction site. Numerous provisions could effect implementation of the proposed project. The following focuses on the main provisions that require compliance.

Section 303 (d) requires all States to conduct triennial reviews to evaluate and, where necessary, to protect the designated uses for the State's waters and to revise water quality standards. As part of this requirement, States develop a list of waterbodies with impaired water quality. The Section 303 (d) list identifies impaired waterbodies and sources of contamination, such as mine drainage, agricultural drainage, urban and industrial runoff, and municipal and industrial wastewater discharges. The State Water Resources Control Board (State Board) is responsible for the triennial review process and for developing the Section 303 (d) list. In late 1998, the EPA partially approved a new Section 303 (d) list submitted by the State Board that includes 472 polluted waterbodies.

The EPA also has developed National Guidance on Water Quality Criteria under Section 304 (a) for pollutants to protect human health and aquatic life. Relevant pollutants are identified under Section 307 of the CWA.

Under Section 401, the State Board, acting for the EPA, certifies that Federally licensed or funded projects are consistent with maintenance or attainment of water quality standards. The need for Section 401 certification is required for Section 404 permits (as well as Rivers and Harbors Act Section 10 permits) and will need to be determined on a site-specific basis. Section 401 water quality certification will be requested from the applicable Regional Water Quality Control Board (Regional Board) for Section 404/Section 10 activities, and other regulated activities (unless water quality certification has been waived, i.e., applicable primarily to Section 404/Section 10 general or nationwide permits, or otherwise determined not to be required). If certification is issued or waived, the State would certify that the proposed work would not violate State water quality standards.

Section 402 regulates discharges of any pollutant, or combination of pollutants, notwithstanding Section 301 (a), upon condition that such discharge will meet either all applicable requirements under Sections 301, 302, 307, 308, and 403. Stormwater discharges from construction activities and discharges of wastewaters are regulated by this section of the CWA. The applicable Regional Board regulates this section of the CWA.

Stormwater discharges from construction activities involving at least 5 acres of disturbed land (in 2003 this acreage reduces to 1 acre) must be authorized by a Section 402 National Pollution Discharge Elimination System (NPDES) general permit. Reclamation will require that a Stormwater Pollution Prevention Plan (SWPPP) be developed, approved, and implemented that specifies best management practices (BMPs) that will prevent all construction pollutants from contacting stormwater and address measures that will keep all products of erosion from moving off site into receiving waters. A Notice of Intent to utilize the NPDES General Permit for Stormwater Discharges Associated with Construction Activity (Water Quality Order No. 92-08-DWQ) and the SWPPP will be submitted to the State Board for their review prior to construction. The SWPPP will be available at all construction sites during construction and available to contractors and representatives of the State Board or local agencies.

The SWPPP will include (1) the identification of pollutant sources that may affect the quality of stormwater associated with construction activity and (2) the identification of stormwater pollution prevention measures and BMPs that would be utilized to reduce pollutants in stormwater discharges during and after construction. Therefore, the SWPPP will include a description of potential pollutants to stormwater from erosion, management of any dredged sediments, and any hazardous materials that may be on site during construction (including vehicle and equipment fuels). The SWPPP will also include details of how sediment and erosion control practices outlined above would be implemented.

Regulation of wastewaters would require either a separate Federal or State permit (called Waste Discharge Requirements). The applicable Regional Board could, however, waive regulation for those activities where no impact on water quality is expected. A Waste Discharge Requirements permit/waiver will be requested from the applicable Regional Board for dewatering and depressurization activities. If issued or waived, the State will certify that the proposed work will not violate State water quality standards.

Section 402 (l)(1) excludes permit requirements under Section 402 for discharges composed entirely of return flows from irrigated agriculture except as provided in Section 307 for a toxic pollutant injurious to human health.

Section 403 addresses ocean discharge criteria. No permit under Section 402 for a discharge into the territorial sea, the waters of the contiguous zone, or the oceans will be issued, after promulgation of guidelines established under Subsection (c) of this section, except in compliance with such guidelines.

Section 404 identifies conditions under which a regulatory permit is required for activities that result in the placement of dredged or fill materials into waters of the United States (which includes wetlands). The U.S. Army Corps of Engineers (USACE) administers the regulatory program.

Reclamation will make application to the USACE for CWA Section 404 authorization for activities that are regulated by the USACE and will result in the deposition of dredged or fill materials into waters of the United States. Either an individual, general, or nationwide permit may apply, depending on the ultimate parameters of the proposed project. If the proposed work can be accomplished under a general or nationwide permit, it will be prosecuted pursuant to the general or nationwide permit conditions and BMPs applicable at the time of authorization. If an individual permit is required, a public notice is generally issued by the USACE requesting public comment on the proposed action (but this requirement may be foregone due to the extensive public involvement effort that has been conducted for this project). After the close of the public notice comment period, all comments received would be forwarded to Reclamation for response. The USACE would ultimately prepare a “finding of fact” and make a determination whether to issue a permit, with or without special conditions, for the proposed work.

## **F4.2 Rivers and Harbors Act of 1899**

Section 10 of the Rivers and Harbors Act of 1899, as amended, prohibits the unauthorized obstruction or alteration of any navigable water of the United States without authorization by the USACE. Such activity requires a permit from the USACE.

## **F4.3 Safe Drinking Water Act**

The Safe Drinking Water Act (Public Law 99-339) became law in 1974 and was reauthorized in 1986 and again in August 1996. Through this act, the United States Congress gave the EPA the authority to set standards for contaminants in drinking water supplies. Amendments to this act provide more flexibility, more State responsibility, and more problem prevention approaches. The law changes the standard-setting procedure for drinking water and establishes a State Revolving Loan Fund to help public water systems improve their facilities and to ensure compliance with drinking water regulations and to support State drinking water program activities.

Under the provisions of this act, the California Department of Health Services (DHS) has the primary enforcement responsibility. The California Health and Safety Code establishes this authority and stipulates drinking water quality and monitoring standards. To maintain primacy, a State’s drinking water regulations cannot be less stringent than the Federal standards.

#### **F4.4            Underground Injection Control Program**

The Underground Injection Control (UIC) Program, part of the Safe Drinking Water Act, provides the Federal authority for regulating deep-well injection. This program establishes a scheme for the regulation of public drinking water systems and sets minimum standards for drinking water supplies. The UIC Program utilizes the very complex operating, tracking, and monitoring requirements set up under the Federal hazardous waste statutes. Disposal of hazardous waste into an injection well generally requires compliance with both the Federal and State regulatory schemes: compliance with the UIC Program, including Federal operating permit, a hazardous waste facilities permit from the DHS, and submission of a hydrological assessment report to the DHS and the Regional Board.

#### **F4.5            Resource Conservation and Recovery Act**

The Resource Conservation and Recovery Act (RCRA) applies to agricultural operations, and, in general, comprehensively regulates the design and operation of surface impoundments. It regulates hazardous waste and the generation, transportation, treatment, storage, and disposal of that waste. It excludes from its hazardous waste regulations “irrigation return flows.” To the extent that the RCRA does apply to subsurface drainwater, the concentrations of toxins found in the Central Valley’s drainwater already exceed or are approaching the threshold levels that would subject evaporation ponds to the highly complex standards for design and operation, and that may subject the growers to the rather onerous controls that apply to “generators” or “transporters” of hazardous waste. These controls include, primarily, requirements to test and monitor the waste stream.

#### **F4.6            California Porter-Cologne Water Quality Act**

The Porter-Cologne Water Quality Act provides a comprehensive water quality control scheme that is administered by the State Board and the Regional Board. The jurisdiction of this act extends to all “waters of the State,” including surface and subsurface waters, and saline waters. Unlike the CWA, the Porter-Cologne Act does not exclude irrigation return flows from its purview. The State Board establishes policy guidelines while the Regional Boards adopt Water Quality Control Plans (Basin Plans) and develop waste discharge limitations as necessary to protect beneficial uses.

This act requires anyone discharging or proposing to discharge waste within any region of the State to file a report with the Regional Board describing the action taken and to comply with such other requirements as established by the regional Basin Plans. The Regional Boards have promulgated requirements for discharges to their respective waterways for the major aggravating constituents in agricultural drainwater to comply with the provisions of the CWA. The criteria can be numerical or based upon biological assessment methods, for all priority pollutants for which EPA has published criteria under Section 304(a) of the CWA. The Regional Boards must also comply with the CWA antidegradation policy, which requires the Regional Boards to, at a minimum, (1) maintain whatever water quality is necessary to protect existing instream uses and (2) preserve the quality of waters that exceed levels necessary to support the propagation of fish, wildlife, and recreation.

The serious problem associated with ponding drainwater laden with high concentrations of Se and arsenic is, if that if they are high enough to meet the hazardous waste threshold, then, they are subject not only to the Regional Board requirements but to the more stringent requirements established under the Hazardous Waste Management Act administered by the DHS.

The real regulatory problem with the disposal of hazardous drainage centers around the Federal policy of treating surface impoundments as the “least favored method” of disposal and the State statutory policy of generally prohibiting the development of new hazardous waste impoundments. The State Hazardous Waste Management Act prohibits the disposal of hazardous agricultural drainwater in evaporation ponds beyond 1990 unless it is treated. Drainwater is not deemed to be treated if it contains any persistent or biocumulative toxic substances in excess of the DHS soluble threshold limit concentrations.

#### **F4.7 California Toxic Pits Control Act**

The Toxic Pits Control Act was enacted to prevent environmental contamination from leaking waste impoundments. It prohibits the discharge of liquid hazardous wastes into an evaporation pond if the pond or the land beneath it already contains hazardous wastes and the pond is within ½ mile upgradient from a potential source of drinking water. The discharge of hazardous drainwater to evaporation ponds located in other areas may be permitted after submission of a hydrogeologic assessment report to the DHS and the Regional Board, and compliance with this act’s many design, operation, and maintenance regulations, including the use of double liners and leachate collection systems and the monitoring of groundwater. The drainwater ponded may not contain selenium, arsenic, or other bioaccumulative constituents in excess of the DHS soluble threshold limit concentrations.

#### **F4.8 California Hazardous Waste Control Act**

The Hazardous Waste Control Act is the State’s counterpart to the Federal RCRA statute. It comprehensively regulates “hazardous” waste.

#### **F4.9 California Hazardous Waste Management Act**

The Hazardous Waste Management Act of 1986, an amendment to the Hazardous Waste Control Act, is significant in that it generally prohibits land disposal of liquid wastes and hazardous wastes after 1990, except for “treated” hazardous waste or solid waste generated in the cleanup of a contaminated site. This act prohibits the land disposal of hazardous waste beyond May 8, 1990, unless it is treated. Thus, unless “treated” or excepted by another provision, an agricultural waste discharge will have to comply with the exemption criteria of this act.

#### **F4.10 California Toxic Injection Well Control Act**

The State has authority to regulate the deep-well injection of hazardous waste under the Toxic Injection Well Control Act and the Hazardous Waste Management Act. The Toxic Pits Control Act is inapplicable here as it only attempts to regulate surface impoundments. Both this act and the Hazardous Waste Management Act recognize the increased occasion of contaminant

migration from land treatment facilities, such as injection wells, and, therefore, provide authority for State regulation.

#### **F4.11 Federal and State Deep-Well Injection Regulations**

Injection wells are regulated by the EPA, DHS, and Regional Board. The Federal regulatory authority is extensive and very complex. Certain wells are subject to EPA's UIC Program, while others are subject to the State's regulatory scheme. Some wells are subject to both the Federal and State requirements. Both regulatory schemes require permits for construction of a well and include a complex set of criteria and rules for operation. The Federal UIC Program utilizes the very complex operating, tracking, and monitoring requirements set up under the Federal hazardous waste statutes.

Disposal of hazardous waste into an injection well generally requires compliance with both the Federal and State regulatory schemes: compliance with the Federal UIC Program, including Federal operating permit, a hazardous waste facilities permit from the DHS, and submission of a hydrological assessment report to the DHS and the Regional Board.

#### **F4.12 California Water Conservation and Water Bond Laws**

The Water Conservation and Water Quality Bond Law of 1986 was passed to provide funds for the construction of "cost effective containment structures and treatment facilities for the treatment, storage and disposal of agricultural drainage water". The fund was established to provide monies to assist local agencies in their water conservation programs and "to aid in the construction of drainage water management units for the treatment, storage, or disposal of agricultural drainage water ...." The term "drainage water management units" includes treatment facilities to remove or substantially reduce the level of constituents that pollute or threaten to pollute State waters, evaporation ponds, and injection wells.

Other State bond laws working on similar principles are the Clean Water Bond Laws of 1970, 1974, 1984, and the State Water Pollution Control Revolving Fund; Clean Water and Conservation Bond Law of 1978; and DWR and State Board Loans for Recharge and Irrigation Drainage.

#### **F4.13 Surface Water Rights and Compliance**

Applies to all projects that involve any change to surface water rights and/or existing diversions.

#### **F4.14 Groundwater Rights and Management and Compliance**

Actions may be subject to a county ordinance, approval by a local agency or district, or the terms of judicial adjudication, if they involve: (1) the use, replenishment, transfer, or sale of groundwater; (2) the use of a groundwater basin for storage; or, (3) the construction, abandonment, or destruction of a well.



## **F5 BAY/DELTA/COASTAL REQUIREMENTS, PERMITS, AND/OR APPROVALS**

Both the Federal and State governments have enacted legislation and requirements to ensure that projects do not needlessly harm Bay/Delta/coastal resources. The major legislation's applicable to the alternatives under consideration are discussed below.

### **F5.1 Coastal Zone Management Act and Coastal Zone Act Reauthorization Amendments of 1990**

The Coastal Zone Management Act and the Coastal Zone Reauthorization Act Amendments of 1990 make Federal funds available to encourage States to develop comprehensive management programs in an effort to increase the effective management, beneficial use, protection, and development of the coastal zone. These acts apply to all actions that are located within a designated coastal zone. Sections 307(c)(1) and (2) state that any Federal agency whose activities directly affect the coastal zone will, to the maximum extent practicable, be consistent with approved State management programs. In other words, Federal actions must conform to the requirements of State-approved programs.

Thus, any applicant seeking a permit or license to conduct an activity affecting land and water uses in a State's coastal zone must certify to the Federal permit or licensing agency that the activity will be conducted in a manner consistent with the State-approved program.

### **F5.2 California Coastal Commission**

The California Coastal Commission was established by voter initiative in 1972 (Proposition 20) and made permanent by the Legislature in 1976 (the Coastal Act). The primary mission of the Commission, as the lead agency responsible for carrying out California's Federally approved coastal management program, is to plan for and regulate land and water uses in the coastal zone consistent with the policies of the Coastal Act.

The Commission is one of California's two designated coastal management agencies for the purpose of administering the Federal Coastal Zone Management Act in California. The most significant provisions of this Federal act give State coastal management agencies regulatory control (Federal consistency review authority) over all Federal activities and Federally licensed, permitted or assisted activities, wherever they may occur (i.e., landward or seaward of the respective coastal zone boundaries fixed under State law) if the activity affects coastal resources. Examples of such Federal activities include outer continental shelf oil and gas leasing, exploration, and development; designation of dredge material disposal sites in the ocean; military projects at coastal locations; CWA Section 404 permits; certain Service permits; National Park projects; highway improvement projects assisted with Federal funds; and commercial space launch projects on Federal lands. Federal consistency is an extremely important coastal management tool because it is often the only review authority over Federal activities affecting coastal resources given to any State agency. The San Francisco Bay Conservation and Development Commission has this authority within San Francisco Bay, while the Coastal Commission exercises this authority relative to the rest of California's coastal zone.

Commission jurisdiction in the coastal zone (which is specifically mapped) is broad and applies to all private and public entities and covers virtually all manner of development activities, including any division of land, a change in the intensity of use of State waters and of public access to them. The Coastal Act includes specific policies (see Division 20 of the Public Resources Code) relating to public access and recreation, lower cost visitor accommodations, terrestrial and marine habitat protection, visual resources, landform alteration, agricultural lands, commercial fisheries, industrial uses, water quality, offshore oil and gas development, transportation, development design, power plants, ports, universities, and public works. These policies constitute the statutory standards applied to planning and regulatory decisions pursuant to the Coastal Act.

### **F5.3 San Francisco Bay Conservation and Development Commission**

The San Francisco Bay Conservation and Development Commission regulates all filling and dredging in San Francisco Bay (which includes San Pablo and Suisun bays, sloughs, and certain creeks and tributaries that are part of the Bay system, salt ponds and certain other areas that have been diked off from the Bay). It provides protection to Suisun Marsh, the largest remaining wetland in California, by administering the Suisun Marsh Preservation Act in cooperation with local governments. It regulates new development within the first 100 feet inland from the Bay to ensure that maximum feasible public access to the Bay is provided. It minimizes pressures to fill the Bay by ensuring that the limited amount of shoreline area suitable for high priority water-oriented uses is reserved for ports, water-related industries, water-oriented recreation, airports, and wildlife areas. The Commission pursues an active planning program to study Bay issues so that Commission plans and policies are based upon the best available current information. It administers the Federal Coastal Zone Management Act within the San Francisco Bay segment of the California coastal zone to ensure that Federal activities reflect Commission policies. It participates in the regionwide State and Federal program to prepare a Long Term Management Strategy for dredging and dredge material disposal in San Francisco Bay. It participates in California's oil spill prevention and response planning program.

## **F6 LAND USE AND REGIONAL, COUNTY, AND LOCAL REQUIREMENTS, PERMITS, AND/OR APPROVALS**

Both the Federal and State governments have enacted land use and regional, county, and local legislation and requirements to ensure that projects do not needlessly harm the environment. These major requirements are discussed below.

### **F6.1 California State Lands Commission Lease and Permit**

A real estate lease or permit may be required from the California State Lands Commission for placement of project facilities on State lands.

### **F6.2 California Department of Transportation Encroachment Permit**

A California Department of Transportation encroachment permit would be required for any project that would include an area within, under, or over a State highway right-of-way, including opening or excavating a State roadway for any purpose; placing, changing, or renewing an

encroachment; planting or tampering with vegetation growing along any State roadway; constructing and maintaining road approaches or connections to the right-of-way on any State roadway; and conducting any activity that affects the use of the roadway.

### **F6.3 California County Permits**

Conceptual plans will be submitted to appropriate California county Building and Planning Departments, who will, in turn, determine if planning, building, or electrical permits for the project are required. In addition, Land Division approval may be required by the counties.

Local regulatory compliance would include actions that involve earthmoving activities including those that involve changes to gravel mining practices, activities within local road right-of-ways, building of a structure or significant modification or renovation of an existing structure, and construction inconsistent with local land use designations. These actions include the following:

- Grading Permits
- Encroachment Permits
- Building Permits
- Special Use or Conditional Use Permits
- Subdivision Map Approval
- Specific Plan Approval
- Zoning Ordinance Approval
- Surface Mining and Reclamation Act Compliance
- Williamson Act Compliance

### **F6.4 Levee District Permits**

Levee district permits may be required for project work.

### **F6.5 Reclamation Board Encroachment Permit**

Applies to actions that would include (1) the placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, or encroachment within an area under the jurisdiction of the Reclamation Board, including designated floodways, project levees and areas between levees, and streams within the Central Valley; or (2) work of any kind within an area with an adopted flood control plan.

### **F6.6 State, Areawide, and Local Plan and Program Consistency**

Agencies must consider the consistency of a proposed action with approved State and local plans and laws. Given the extremely large number of State and local jurisdictions within the study area, not all of the individual plans and laws were reviewed. In accordance with Executive Order 12372, the environmental documents are being prepared with input from the Cooperating

Agencies and Consulting Agencies. During the NEPA and CEQA review periods, the environmental documents will be circulated to the appropriate State agencies and to the State Clearinghouse to satisfy review and consultation requirements.

#### **F6.7 Coordination With Related Federal, State, and Local Programs**

Reclamation will conduct a formal coordination process to identify other programs that could significantly affect the assumptions, implementation, or effectiveness of the proposed project. In addition, Reclamation will actively include interested or affected parties or programs as part of its Public Involvement Program for the proposed project. Programs will include the following:

- The Westside Integrated Resources Plan
- Various Central Valley Project Yield Improvement studies
- Land retirement studies and implementation
- San Joaquin Valley Drainage Program implementation
- Grassland Bypass Project and related studies

### **F7 ADDITIONAL ENVIRONMENTAL LEGISLATION AND REQUIREMENTS**

During the NEPA and CEQA environmental documentation process the following additional environmental legislation and/or requirements will also be addressed.

#### **F7.1 Clean Air Act**

The Clean Air Act, as amended, requires that any Federal entity engaged in an activity that may result in the discharge of air pollutants must comply with all applicable air pollution control laws and regulations (Federal, State, or local).

#### **F7.2 National Historic Preservation Act of 1966**

Section 106 of the National Historic Preservation Act requires that Federal agencies evaluate the effects of Federal undertakings on historical, archeological, and cultural resources and afford the Advisory Council on Historic Preservation and State Historic Preservation Officer opportunities to comment on the proposed undertaking. The first step in the process is to identify cultural resources included on (or eligible for inclusion on) the National Register of Historic Places that are located in or near the project area. The second step is to identify the possible effects of proposed actions. The lead agency must examine whether feasible alternatives exist that would avoid such effects. If an effect cannot reasonably be avoided, measures must be taken to minimize or mitigate potential adverse effects.

#### **F7.3 Wild and Scenic Rivers Act of 1968**

The Wild and Scenic Rivers Act designates qualifying free-flowing river segments as wild, scenic, or recreational. This act establishes requirements applicable to water resource projects affecting wild, scenic, or recreational rivers within the National Wild and Scenic Rivers System,

as well as rivers designated on the National Rivers Inventory. Under this act, a Federal agency may not assist the construction of a water resources project that would have a direct and adverse effect on the free-flowing, scenic, and natural values of a wild or scenic river. If the project would affect the free-flowing characteristics of a designated river or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area, such activities should be undertaken in a manner that would minimize adverse impacts and should be developed in consultation with the appropriate Federal agency having administrative responsibility (e.g., National Park Service).

#### **F7.4 California Wild and Scenic Rivers Act**

The California Wild and Scenic Rivers Act is similar to the Federal Wild and Scenic Rivers Act and it applies to projects that are located on a California-designated wild and scenic river.

#### **F7.5 Wilderness Act of 1964, as Amended**

The Wilderness Act establishes requirements applicable to water resource projects affecting designated wilderness. Under this act, a Federal agency may not assist the construction of a water resources project that would have a direct and adverse effect on designated wilderness. If the project would affect a designated wilderness or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area, such activities should be undertaken in a manner that would minimize adverse impacts and should be developed in consultation with the appropriate Federal agency having administrative responsibility (e.g., National Park Service, U.S. Forest Service, U.S. Fish and Wildlife Service, etc.).

#### **F7.6 Federal Water Project Recreation Act**

Section 4(f) of the Federal Water Project Recreation Act establishes requirements applicable to water resource projects affecting Section 4(f) lands. Under this act, a Federal agency may not assist the construction of a water resources project that would have a direct and adverse effect on Section 4(f) lands. If the project would affect these lands or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area, such activities should be undertaken in a manner that would minimize adverse impacts and should be developed in consultation with the appropriate Federal agency having administrative responsibility (e.g., National Park Service).

#### **F7.7 Executive Order 11988, Floodplain Management**

If a Federal agency program will affect a floodplain, the agency must consider alternatives to avoid adverse effects in the floodplain or to minimize potential harm. Executive Order 11988 requires Federal agencies to evaluate the potential effects of any actions they might take in a floodplain and to ensure that planning, programs, and budget requests reflect consideration of flood hazards and floodplain management.

#### **F7.8 Executive Order 12898, Environmental Justice**

Executive Order 12898 requires each Federal agency to achieve environmental justice as part of its mission, by identifying and addressing disproportionately high and adverse human health or

environmental effects, including social and economic effects, of its programs, policies, and activities on minority populations and low-income populations of the United States.

## **F7.9 Indian Trust Assets**

The United States Government's trust responsibility for Indian resources requires Reclamation and other agencies to take measures to protect and maintain trust resources. These responsibilities include taking reasonable actions to preserve and restore tribal resources. Indian Trust Assets are legal interests in property and rights held in trust by the United States for Indian tribes or individuals. Indian reservations, rancherias, and allotments are common Indian Trust Assets.

### **F7.10 Executive Order 13007 (Indian Sacred Sites on Federal Land)**

Executive Order 13007 provides that in managing Federal lands, each Federal agency with statutory or administrative responsibility for management of Federal lands will, to the extent practicable and as permitted by law, accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and avoid adversely affecting the physical integrity of such sacred sites.

### **F7.11 American Indian Religious Freedom Act**

The American Indian Religious Freedom Act applies to all actions that are located on Federal land, sponsored by a Federal agency, or funded with Federal monies; and that could involve impacts on the observance of traditional Native American Religions.

### **F7.12 Farmland Protection Policy Act and Farmland Preservation**

Two policies require Federal agencies to include assessments of the potential effects of a project on prime and unique farmland. These policies are the Farmland Protection Policy Act of 1981, and the Memoranda on Farmland Preservation, dated August 30, 1976, and August 11, 1980, respectively, from the President's Council on Environmental Quality. Under requirements set forth in these policies, Federal agencies must determine these effects before taking any action that could result in converting designated prime or unique farmland for nonagricultural purposes. If implementing a project would adversely affect farmland preservation, the agencies must consider alternatives to lessen those effects. Federal agencies also must ensure that their programs, to the extent practicable, are compatible with State, local, and private programs to protect farmland. The Natural Resources Conservation Service is the federal agency responsible for ensuring that these laws and policies are followed.